

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FINANCE

Call to Order: By **CHAIRMAN BOB KEENAN**, on March 9, 2001 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Bob Keenan, Chairman (R)
Sen. Ken Miller, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Chris Christiaens (D)
Sen. William Crismore (R)
Sen. Greg Jergeson (D)
Sen. Royal Johnson (R)
Sen. Bea McCarthy (D)
Sen. Arnie Mohl (R)
Sen. Linda Nelson (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Bill Tash (R)
Sen. Jon Tester (D)
Sen. Mignon Waterman (D)
Sen. Jack Wells (R)
Sen. Tom Zook (R)

Members Excused: Sen. John Cobb (R)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Jon Moe, Legislative Fiscal Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB109, 3/6/2001; SB 315,
3/6/2001; SB 483, 3/6/2001

{Tape : 1; Side : A}

HEARING ON HB 109

Sponsor: REP. JEFF MANGAN, HD 45, Great Falls

Proponents: Mike Batiste, Administrator Division of Criminal Investigation, Department of Justice

Opponents: None.

Opening Statement by Sponsor:

REP. JEFF MANGAN, HD 45, Great Falls, introduced HB 109, a bill to create a statewide community education curriculum regarding the release of sexual offenders. Originally the bill had an appropriation. He worked with the Department of Justice (DOJ) to take out the appropriation, as it was not needed. The bill continued through the appropriation process and on to the Senate Finance Committee. He recalled that on the lower north side of Great Falls two years ago, there were level 2 and level 3 sexual offenders residing in the neighborhood. There was community concern and confusion about getting information. REP. MANGAN was asked about the procedure when sexual offenders are released. In order to come to a fairly good understanding of the process, he talked to the Attorney General, DOC, DOJ, the Governor, and the Great Falls Chief of Police and Sheriff. Six months later, he had figured out the process. He concluded that other communities had similar problems and that a curriculum was needed. The DOJ has an internet site for sexual and violent offenders and agreed to disseminate the information for communities on the site. DOJ already has access to all the needed information, and an appropriation was not needed. It fit the intent of HB 109 to make information available to whoever wants it. He thought the internet site would be very helpful in disseminating information, making sure communities know what the process is, who to contact and who is responsible.

Proponents' Testimony:

Mike Batiste, Administrator Division of Criminal Investigation, Department of Justice, stated that DOJ supported HB 109. He believed that most of what REP. MANGAN was asking for has been developed and will be provided by DOJ. Just before the start of the session, they secured a federal grant to develop a web site that lists a complete violent offender registry. The site includes photographs of high level offenders and background information in terms of address and type of offense. He thought the bill was important to clarify how law enforcement agencies are to disseminate the information. He said the current law was vague on who has that responsibility and what type of information

can be disseminated. The bill provides clarification. The internet site is a vehicle for local law enforcement agencies to disseminate the information with consistency and continuity statewide. There is information for children on the web site on how to protect against sex offenders. There are links to other sites for information on sex offenders, how they work and how they prey on children. He said that since they were able to secure the grant, the web site is a reality. He again stated support for the bill.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

SEN. BILL TASH commented that HB 151 deals with sexual offenders reporting upon release. **REP. MANGAN** stated he served on the House Judiciary Committee and was familiar with the bill. **SEN. TASH** said there was a sexual offender in his community who was released from Montana State Prison. The community needed the information on the individual. He thought the access to information was in existing law and that the web site would enhance that information. **REP. MANGAN** said that was exactly what the bill was intended to do: to disseminate the information that is currently in law regarding the release of sexual offenders, and to clarify the responsibilities of government and the responsibilities and rights of communities.

SEN. NELSON asked about the appropriation. **REP. MANGAN** said between the time the bill was written and by the time he got to the session and started looking at the financial picture, he found out about the DOJ web site and that the project could be done electronically. The appropriation was not then needed. He recommended to appropriations that the appropriation be taken out.

SEN. CHRIS CHRISTIAENS cited page 2 line 15 regarding notification of the victim and any agency, organization or groups serving persons that have characteristics similar to those of a previous victim of the offender. He asked what that would encompass and how it would be accomplished. **SEN. MANGAN** answered that was current law and he didn't know how each local government does that. He hoped the new section of the bill would help by making sure every local law enforcement agency and local government knows what the law says and what their responsibilities are. **SEN. CHRISTIAENS** said he was aware of a level 3 offender, whose crime was the sexual assault of an underage victim. He wondered if the DOJ would have the

obligation to notify all young girls under the age of 16. **REP. MANGAN** said that was current law. **SEN. CHRISTIAENS** asked what would be done to notify the community in that kind of case. **Mr. Batiste** explained that was done at the time an offender registers. The goal of the web site is for each member of the community to get the same timely information at the same time. A victim is notified locally through a probation/parole officer or victim/witness service unit in a county attorneys office. They hope to broaden the dissemination of information via the internet to not only the past victim but any potential, future victims. **SEN. CHRISTIAENS** expressed concern about the information not being disseminated until the offender has registered and is already in the community. **Mr. Batiste** clarified that any offender released from prison has to register 10 days prior to release and provide DOJ, DOC and the local agency with a notification of where they will reside once released from prison. There is no time delay. If an offender is not in confinement, and has to register as a sex offender, there may be a five or six day delay before the information is disseminated statewide. **SEN. CHRISTIAENS** disagreed saying that would be true if an individual was paroling. Those who are discharged may or may not know where they are going to live. They are in a community without an address before they register. **Mr. Batiste** agreed but said that in most instances when an individual specifies an address, that information is shared. When there is a gap, they try to monitor the offender's location and relatives' addresses.

SEN. ROYAL JOHNSON asked **Mr. Batiste** if he was familiar with HB 151 carried by **REP. NEWMAN** at the request of DOC. **Mr. Batiste** did not. **SEN. TASH** said HB 151 was to clarify probation laws. **REP. MANGAN** affirmed that **REP. NEWMAN's** bill tightened up areas of responsibilities of probation and parole officers. HB 109 will not affect that in any way other than allow for the dissemination of information and define probation officers' responsibilities.

SEN. COREY STAPLETON inquired about the shalls and musts in the bill. He was concerned about a possible shift of responsibility and liability from localities to the state. **Mr. Batiste** thought that regardless of the language, there are a number of handoffs in disseminating the information. Offenders are required to register at a local level so local communities know who in the community are sex or violent offenders. DOJ will maintain a central registry of information for the purpose of quality control. If an offender fails to register, a notice goes out to local agencies. He said that tracking down offenders who failed to register has been successful. There is e-mail on the web site. **SEN. STAPLETON** remarked that the information already exists at the local level.

{Tape : 1; Side : B}

He inquired if the bill obligated the state or put it at liability. **REP. MANGAN** claimed it would not. He asserted that Great Falls and Billings both have good programs in place but other communities don't. He said the bill puts out that information which is currently in law. The internet curriculum does not replace the local responsibility. If a local police department chooses to post notices, that will not change because of this bill. The bill deals with what the statutes say, the responsibilities of the state and local governments and some safety tips for families and children. He said that would mesh nicely with what the DOJ already put together on the web site. He envisioned the information being readily available to communities and said rural communities would benefit the most. The state would be obligated to put the information on the site, but not to oversee responsibilities at the local level. **SEN. STAPLETON** commended the work on the bill. He disagreed that current law was not changed by the "musts" and "shalls" in the bill. He saw a shifting of responsibility to the state. **REP. MANGAN** asserted that the section was specifically about the curriculum and does not supercede the dissemination section in current law.

SEN. GREG JERGESON questioned whether software designed to block access to sexually oriented material would block access to an informative site. **Mr. Batiste** said they addressed security problems and possible dissemination problems with their computer consultant and were sure that was not a problem. **CHAIRMAN KEENAN** stated the possibility of re-referring the bill to the Judiciary Committee to sort out some of the concerns.

Closing by Sponsor:

REP. MANGAN closed on HB 109. Addressing some of the concerns that were raised, he reiterated that he did not think the bill would cause a liability problem for the state. He said he would talk to the legal department at DOJ and get information to **SEN. STAPLETON**. He clarified that the current law states that level 1 offenders must notify the department. For level 2 offenders, it is discretionary for local governments to disseminate information. For level 3 offenders, they must disseminate the information. He said the bill aids communities and addresses Montana's responsibilities in a place where everyone has access. Communities will still have their own notification procedures. He urged concurrence on the bill.

HEARING ON SB 315

CHAIRMAN KEENAN explained that SB 315 had a hearing in the Public Health, Welfare and Safety Committee and went to the floor of the house. He said he looked at the bill and thought about an amendment to tie the medical reimbursement that is done with MCHA to a scale. He thought that if there is a program that should have participation with the medical community to reduce the rates rather than billable charges, this might be one so that the benefits of the program could be spread out. He did not want it to harm the medical community. They are already asked to do a lot. They were asked to participate in bailing out State Fund a number of years ago and that participation has never been reduced.

Sponsor: **SEN. EVE FRANKLIN, SD 21, Great Falls**

Proponents: **Chuck Butler, BCBS of Montana, and Vice Chair of
the MCHA Board of Directors
Claudia Clifford, Office of the Insurance
Commissioner, State Auditor
Aidan Myhre, MCHA
Al Pontrelli, Montana Association of Insurance and
Financial Advisors
Jamie McCullum, Deaconess Billings Clinic
Sharon Hoff-Brodowy, Montana Catholic Conference
Sammy Butler, Montana Nurses Association
Mary Ellen, Montana Benefits and Life Company
Mary Cafara, WHEEL
Mary Beth Frideres, Montana Primary Care
Association
Bob Olson, Montana Hospital Association
Clyde Daly, Associated State Director for AARP
Montana**

Opponents: **None.**

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls, explained that the MCHA (Montana Comprehensive Health Association) program was begun in the 1980s in order to deal with the issue of the uninsured. The program is participated in by private insurers who are assessed 1 percent of the income on all premiums sold in the state, which is put into a fund and used as a pool of money for people with chronic health conditions who cannot be insured by any other way in the state. In order to be eligible for the program, a person has to be turned down twice by private insurance companies. The plan is run by a private board and is administratively attached

to the State Auditor's office. A second plan, called The Portability Plan was developed in response to Kennedy-Kasenbaum legislation. The state chose to use this vehicle for those who needed portability that were coming off another insurance plan. She stated that the plan has been solvent and explained the rate scale and the high rates that people must pay to access the program. There were concerns in the 1999 session about the solvency of the program. MCHA received a \$2 million appropriation from the tobacco settlement. It turned out that through aggressive management, that the \$2 million was not needed as soon as was projected. SB 315 asks that the \$2 million not be reverted. They felt the program was growing in terms of participants so much that the \$2 million would be needed. There are 25 to 30 new participants applying monthly. In its original form, SB 315 would give the board, at their discretion, the ability to consider a pilot program that would subsidize rates for people who are at 150 percent of poverty or below. The cost of uncompensated care would be cut. This would benefit the health care system and the impact of cost shifting on the privately insured. The bill asks for the flexibility to use whatever money they may secure to subsidize rates for people below 150 % of poverty. She explained that it was a great program but not cheap. Many cannot afford the rates, but could access the program on a sliding scale. Amendments with controlling language were put on the bill by **SEN. GRIMES.**

Proponents' Testimony:

Chuck Butler, BCBS of Montana, and Vice Chair of the MCHA Board of Directors, described the membership of the board. He testified that the State of Montana has one of the highest levels of uninsured in the United States, about 20 percent. The number one reason is affordability. Blue Cross Blue Shield of Montana administers the MCHA under contract with the board. The members of MCHA, nearly 2000 Montanans, get the benefit of any provider arrangements that BCBS of Montana has for their traditional business. MCHA member plans pay approximately 60 percent of the overall cost of medical care and the utilization of medical and hospital services that people on the MCHA program receive through a subsidy. That subsidy has been at 1 percent of total health insurance premiums paid in the state. In FY 1999, the subsidy that insurer's **{Tape : 2; Side : A}** paid was \$2.8 million. In FY 2000, it was \$4.7 million, and in it is anticipated to be about \$4.7 million in FY 2001. The MCHA board is under the oversight of the State Auditor for its actions and decision making and rates charged for premiums. The legislation enables the board with the authority of the commissioner to provide a subsidy for low income Montanans with money received from sources other than additional subsidies upon the people they serve.

Claudia Clifford, Office of the Insurance Commissioner, distributed a fact sheet on the bill. **EXHIBIT(fcs54a01)** She testified that bill was the result of the recommendation from a study of the issue of the uninsured. The bill is structured so that the board has the flexibility, should they be able to secure some funding in the future, to try and provide access to the program for people who don't have insurance. Eligibility is not being expanded. The board would be allowed to reduce premiums so that people who are currently eligible but can't afford the coverage could get onto the coverage. She spoke to the importance of the issue of cost shifting in the health care system. Currently hospital charity care is about \$67 million a year, which is a significant impact on the system from people who can't afford insurance and can't afford to pay all of their medical bills. The bill tries to reach these people. The bill does not create an entitlement program. The bill will require the program to only provide subsidies to the extent that there are funds. There will be no impact on the regular program. The board has done a good job of managing funds. She said MCHA was a good example of a strong private/public partnership trying to provide a valuable service. They have done a good job at managing costs. They are very concerned about keeping the core program solvent, but are looking to contribute to the overall health of the health care system. The reason the bill was before the Senate Finance Committee was the section dealing with the reversion of funds. She passed out a letter from **Oscar Lanes.** **EXHIBIT(fcs54a02)**

Aidan Myhre, MCHA passed out an MCHA rate card and newsletter. She said the board and the insurance industry support the plan. She explained that MCHA has two programs, the traditional plan that was started in the 1980s and the Portability Plan that was established in 1997. She said participation had doubled in two years with the majority of the growth happening in the Portability Plan. She stated that the program takes care of the uninsured and helps with uncompensated care. She testified that the projection for needing the \$2 million was correct, but the timing was incorrect. The money will be needed in the next two years and she encouraged supporting the bill for that purpose. She spoke about language in the bill concerning the low income subsidy program. As premiums increase, some drop off the plan because they can't afford it. The bill would enable MCHA to apply for funds from foundations to put into place a mechanism to provide a subsidy program.

Al Pontrelli, Montana Association of Insurance and Financial Advisors, concurred with the previous testimony and reported that the association was strongly in favor of the passage of SB 315.

Jamie McCullum, Deaconess Billings Clinic, stated support of SB 315. They felt it was important to provide as much health care coverage as possible for all Montanans. She encouraged providing decreasing premiums for those individuals who are eligible, but cannot afford the premiums. She testified that she was a high risk individual and an independent business person. She is on the program, and it has been very valuable to her.

Sharon Hoff-Brodowy, Montana Catholic Conference, explained that the Catholic Conference represents the two Catholic bishops in Montana. She spoke of traveling the state, and related a story of a couple from Thompson Falls that were uninsurable. She said the Catholic Church was very interested in the common good and the role that government plays in creating a culture that respects and cherishes the dignity of every human person. She encouraged allowing the \$2 million to stay in the pool to support the program so more of the uninsured could access it.

Sammy Butler, Montana Nurses Association, testified that the association has a strong commitment to access to health care and health care insurance. She said the bill supports those concepts and provides an equitable process for implementation. It would also provide flexibility for the board to expand the program. She stated strong support for SB 315.

Mary Ellen, Montana Benefits and Life Company, said MBLC is one of the companies represented on the board of directors of MCHA. She asked for continuing support for MCHA as a plan which gives Montanans who have had catastrophic illnesses an avenue to have insurance coverage. She asked for support of SB 315.

Mary Caferro, WHEEL (Working for Equality and Economic Liberation), described a WHEEL board member's health crisis. She asked for support of SB 315 for low income Montanans.

Mary Beth Frideres, Montana Primary Care Association, an association of Montana's community migrant and rural health centers, supported SB 315 representing Montana's federally funded community health centers and migrant health centers. They have over 40,000 Montanans as patients. Of those, 27,000 have incomes less than 100 percent of poverty. More than 26,000 of the patients are uninsured. Fewer than 6,000 are privately insured and Medicaid and Medicare cover approximately 7000. They work with a population of people that have difficulty paying their medical bills, but really support SB 315 because it attempts to make available insurance on an ability to pay basis. All services in federally funded community health centers are on a sliding scale. They have a lot of experience with people who want to pay, and can't afford to pay the full fee, but are

willing to pay what they have the ability to pay. It is way to give people a way to help themselves.

{Tape : 2; Side : B}

Bob Olson, Montana Hospital Association, testified **CHAIRMAN KEENAN's** amendment would be of concern to them if the state would begin to regulate provider rates in private insurance plans. He explained that anytime a hospital does business with any government payer, the rates are controlled by that government. Hospitals already provide discounts to Medicare, Medicaid, Workers' Comp, Indian Health, the VA, and others. They are expected to provide care for the counties, for the cities and for the state mental health plan at a discount or for no money at all. He said that Montana hospitals were not all currently losing money, but many hospitals are. Cost shifting ability has evaporated. Several hospitals already have discounted arrangements with Blue Cross Blue Shield and those discounts already go to subsidize the MCHA program. Those are private arrangements with the provider not mandated by the state. The CHIP program was another example. They are working with Blue Cross to look at their data to find out what kind of discount arrangements might be workable. He described the situation when State Fund was in trouble and hospitals were mandated to take discounts. Rates were frozen in 1987 as part of the solution to help out State Fund. That freeze was temporary, then it was extended, then it was made permanent. The subsidy that hospitals provide to State Fund has grown from 0 in 1987 to almost \$15 million currently. The State Fund no longer has a big problem, but they now consider that discount sacrosanct in the workers' comp system. What started out to be a temporary solution and an effort by the hospitals to be part of the solution, is now a permanent subsidy that masks the costs of doing business. He asked for resistance to the amendment. He suggested that MHA be part of the study if additional thought is needed to look at the impacts of such a decision. He stated full support for the bill without the amendment.

Clyde Daly, Associated State Director for AARP Montana, stated that membership in AARP begins at age 50. Many people from age 50 to 65 cannot get insurance for one reason or another. If they change jobs and are not eligible for the portability plan, they have no place to go. Many call the AARP office wondering about getting insurance. They are told about the MCHA program. He said cost is a factor. They want to contribute, buy a plan and keep their dignity. He felt SB 315 would give that opportunity and strongly urged that it pass.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

SEN. LINDA NELSON described people from the agricultural community in her district that are on group policies but are getting to the point where they simply can't afford them. Some are paying over \$800 per month. She wondered whether they would fit in under the portability plan as addressed by SB 315. She said that they would probably have some pre-existing conditions, but health insurance takes over half of their disposable income.

Ms. Clifford answered that the portability plan is not available to those that leave a group policy that still exists. If the group insurance went out of business, then they could qualify for the portability coverage. They can't drop an expensive policy just to get on the MCHA policy. **SEN. NELSON** said some are on private insurance. **Ms. Clifford** said that if they dropped coverage for a time period, became uninsurable and went through the process of trying to get coverage through two insurers and couldn't get insured, then they could get on the program.

SEN. ZOOK asked about insurance rates going up and the percentage of rate increases over a biennium. **Mr. Butler** replied that in the mid-1990s rates were going up in the 5, 10 or 15 percent range. In the last year and going into next year, rate increases are going into the 20s. It is not uncommon for groups to get increases in the range of 20 to 50 percent due to cost and utilization of care. **SEN. ZOOK** asked for confirmation that \$67 million in premiums is collected across the state. **Mr. Butler** said that was the figure for the cost of charity care being provided by hospitals in the State of Montana. **SEN. ZOOK** asked for the amount of insurance premiums collected in the State of Montana. **Ms. Clifford** said that 1 percent of the total premiums last year was \$4.6 million. Next year it should be closer to about \$5 million as 1 percent of the total premiums. Only private insurance carriers are assessed. Self-funded health plans are not assessed. She said that was being addressed in a bill that **SEN. CHRISTIAENS** was carrying. **SEN. ZOOK** asked if all of the 1 percent that is collected goes to the MCHA program. **Ms. Clifford** confirmed that it did and that it covered approximately 60 percent of the cost of the program. The capacity that can be assessed is 1 percent. Last year approximately 3/4 of a percent was assessed because that was what was needed to balance the books. They project assessing the full 1 percent next year if **SEN. CHRISTIAENS** bill does not go through. **SEN. ZOOK** asked what percentage of the 20 percent of Montanans that are uninsured are uninsured by choice. **Ms. Clifford** said she knew of no statistics on being uninsured by choice.

SEN. ROYAL JOHNSON asked how it was assessed whether a person was at 150 percent of poverty. **Mr. Butler** replied that if SB 315 passes, the MCHA board would work with DPHHS and the Auditor's office. Under the CHIPs program, DPHHS has engaged an outside entity to assist them on eligibility and there have been some preliminary discussions about contracting for the eligibility determination with DPHHS and the agency they use. **SEN. JOHNSON** asked if a tax return would be used. **Mr. Butler** was not sure what information was used for determination, but that tax returns were used in some programs. **SEN. JOHNSON** asked about other sources of funding. **Mr. Butler** explained that there are foundations that address health care needs and one of the key issues in recent years has been the uninsured population and uncompensated care. In Montana, both of those are serious problems. There are also possibilities of federal funding. **SEN. JOHNSON** asked about the subsidy to State Fund. **Mr. Olson** said that the last time the subsidy to the State Fund was measured was two sessions ago and at that point it was \$12 million. That money goes to all workers' comp carriers, not just State Fund. The amount is never reported by the carriers, so hospitals have to determine the amount on their own. **SEN. JOHNSON** expressed an interest in the subsidy being removed. **Mr. Olson** said that last session **SEN. HARP** carried a bill to establish a minimum percentage that a hospital could receive from State Fund and all workers' comp carriers. The percentage was set at 69 percent of the billable charges. Some hospitals are in the realm of 50 to 55 percent. Hospitals agreed to 69 percent at floor, and in the ensuing years, if rate hikes were kept at or below the increase in the average weekly wage, as measured by the Department of Labor, then the discount rate would float with that equation. Since that time, some hospitals have a higher percentage of charge than 69 percent and some have had lower. Collectively, they are obligated to subsidize the State Fund. **SEN. JOHNSON** asked if there was a bill in the current session that would change that. **Mr. Olson** said that the current session did not seem to be the one to take that issue on. He said the issue would come up again. **SEN. JOHNSON** thought it would be a good session to bring it up as the State Fund has never been in better shape since he had been in the legislature. They have some of the highest paid individuals in state government.

SEN. MCCARTHY asked if people leave the program. **Ms. Clifford** allowed that people do come and go. Older citizens stay until they get on Medicare. Then they can get Medicare supplemental coverage through the program. People on portability generally come and go depending on whether they transfer to another job eventually.

SEN. STAPLETON asked why the \$2 million was not spent. **Ms. Clifford** explained the board manages its own funds and that the State Auditor's office acts as a conduit. The board did such a good job of managing the funds, that the program did not need to access the \$2 million. They have actuaries that work on projections. The money turned out not to have been needed. **SEN. STAPLETON** asked why the money should not be reverted. **Ms. Clifford** acknowledged that by current statute that funds do revert. The bill asks that the \$2 million not revert and be re-appropriated as it will be needed in the next biennium.

SEN. ZOOK asked if \$4.6 to \$5 million is what came from the 1 percent in the last biennium. **Ms. Clifford** explained that was the capacity to assess. The full capacity will be assessed in the coming year and it is projected that it will be needed. **SEN. ZOOK** asked if the 20 percent increase in premiums was included. **Ms. Clifford** answered that premiums are in addition to assessments. The program currently funds itself. About 60 percent of the funds come from assessments on the insurance carriers and 40 percent of the cost of the program is paid by the premiums paid for coverage. **SEN. ZOOK** asked if the 20 percent increase in premiums would be added to the figure.

{Tape : 3; Side : A}

Mr. Butler said a premium increase across the board would be a fair assessment. **SEN. ZOOK** asked if the bill expands the program. **Mr. Butler** answered that the actuaries have concerns about the increase in the numbers of people coming into the program. The biggest increase is in the portability program. As the numbers increase, access increases exponentially.

SEN. MOHL asked who gets the interest from the \$2 million in unexpended funds. **Mr. Butler** said since MCHA has not tapped the funds, the dollars have not been transferred and are in the general fund.

Closing by Sponsor:

SEN. FRANKLIN closed on the bill. She reiterated that MCHA was not a government program, but an entity that was administratively attached to the State Auditor's office. The \$2 million was one of the reasons the bill came for a second hearing before the Finance committee. The original concept of the bill occurred prior to the release of the Martz budget. The concept of re-appropriating did not come up until later. She addressed the issue of "uninsured by choice", saying most constituents make trade-offs, not free choices but the best of bad choices. The bill does not change eligibility requirements. Private insurance

carriers also have an interest in the uninsured pool and how it affects the economy.

HEARING ON SB 483

Sponsor: SEN. CHRIS CHRISTIAENS, SD 23, Great Falls

Proponents: Candace Payne, Montana Addiction Providers Association
 Dave Cunningham, Rimrock Foundation
 Betty Whiting, Montana Association of Churches
 Sharon Hoff-Brodowy, Montana Catholic Conference
 Mark Taylor, Anheuser-Busch
 Scott Chrichton, ACLU
 Marty Lambert, Gallatin County Attorney and Secretary of the County Attorneys Association
 Ed Zink, Deputy Yellowstone County Attorney

Opponents:

Informational Witnesses: Mike Wingard, Legislative Audit Division

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, opened on SB 483, a bill to revise 4th time DUI sentencing. He shared information from a report from the Center for Addiction and Substance Abuse at Columbia University. It said there would be no reduction in substance abuse and addiction rates in this country until state governments shift spending from punishment to treatment and prevention. It said treatment should be provided to prisoners, minimum mandatory sentencing should be eliminated for drug related crimes, and the use of drug courts should be expanded. Taxes on alcohol and tobacco can be increased to do that. Treatment for substance abusers should be required for those receiving state welfare and mental health services. He cited state spending on substance abuse in Montana and said the focus was not where it needed to be. That was one of the reasons for the bill. He felt that if the state continues to spend in a growing corrections budget, there is no way to fund education or other programs the way people want and deserve. The reason he focused on corrections and substance abuse, is that once someone is sentenced to the Department of Corrections, they are no longer taxpayers. They do not contribute to the state, but become tax users. He expected 4th time DUI offenders to pay for their treatment. The reason for suspended sentences in the bill is because it is only with a suspended sentence that some of the other mechanisms can come into play. The bill is also a result

of the lack of treatment being provided for the chemically addicted population. He was shocked to find that 1 in 5 of those going to prison as a fourth time DUI offender or more, leave without any treatment. People are being sentenced for a chemically dependency problem, which is a disease, and they are coming out without treatment. Since 1997, when mandatory sentencing for 4th time DUI occurred, over 1170 people have been sentenced to prison in the state. The total prison population at Montana State Prison (MSP) is 1217. The cost is huge, and then people are not getting treatment. He said he received two letters opposing his bill from individuals who had lost family members due to a DUI. He stated he was also a victim, and had two family members who lost their lives because of a DUI driver. But he understood that those people are sick and need to be treated. The bill changes the focus from punishment to a treatment component and a community based treatment approach with an intensive aftercare supervisory period. Felony DUI offenders would be given a suspended sentence with specific requirements for residential treatment. An individual treatment plan would be determined by the staff of the residential program with flexibility for the length of treatment time. This would vary greatly from one offender to the other. A seriously addicted individual often has a swollen brain stem which needs to be reduced before treatment can even begin. In the Grosfield bill (SB 489) the treatment is 60 days. **EXHIBIT(fcs54a03)** That may or may not be an adequate length of time. He believed that treatment providers are in the best position to determine treatment plans for individuals. He explained results of a random survey of files of offenders with felony DUI. Twenty-six of the thirty-four had 4 DUIs or more. He prepared profiles of each of the inmates that were looked at in the survey. Only 19 had documentation of treatment in their files and the remaining offenders had either not received treatment or their treatment was not documented. SB 489 calls for two years probation. SB 483 calls for an extended period of treatment followed by an intensive aftercare program that can include intensive supervision, that can require ignition interlock if the probation or parole officer deems it necessary, and a four year probation. Following the treatment program, the bill recommends that by rule the aftercare plan includes 90 meetings in 90 days. He explained how current probation and parole standards are inadequate. He expected with his bill that people would be supervised closely, that they would start with intensive supervision with their whereabouts known 24 hours a day. For the individual that was employed at the time of their arrest, their jobs are held when they go into treatment. Group insurance will then pay for the treatment. A survey was done by employers of DUI offenders, identified through the DOL, **{Tape : 3; Side : B}** and out of 21, 66 percent said insurance was provided. It is a myth that DUI offenders are not employed. If 2/3 of offenders in the last year

were employed and perhaps had insurance, that would relieve the general fund. In addition, disabled individuals lose SSI, Social Security and Medicaid once they are incarcerated and those individuals are then paid for with general fund dollars. By suspending the sentence, Medicaid pays for the treatment because chemical dependency is a disease. He said he did not sign the fiscal note because it showed a huge cost to corrections. If the sentence is suspended, there is no cost to corrections. Private insurance will pick up a portion, Medicaid will pick up a portion and only those who end up in the prison will be affected. Treatment fees can be negotiated. He warned that county attorneys would testify against the bill. He said if there were additional crimes attached to the original sentence, those people would not be eligible for either SB 483 or SB 489. The stated savings in both bills may not be accurate, but he assured the committee that they were not accurate in SB 489. The House Appropriations Committee added an amendment that takes \$4 million out of the Corrections budget upon the passage of SB 489. He handed out information to support his testimony.

EXHIBIT (fcs54a04)

Informational Witnesses:

Mike Wingard, Legislative Audit Division, reviewed the statute and the sample survey of offenders (Legislative Request #01L-87). (Exhibit 4). The handout included their general observations.

Proponents' Testimony:

Candace Payne, Montana Addiction Providers Association, provided testimony in support of SB 483. **EXHIBIT (fcs54a05)**

Dave Cunningham, Rimrock Foundation, provided testimony in support of SB 483. **EXHIBIT (fcs54a06)** He also disputed the fiscal note as inaccurate. His idea of treatment was for 5 days a week every evening for a year followed by long term after care. If offenders don't follow the program, they go back to prison.

Betty Whiting, Montana Association of Churches, urged passage of SB 483. The organization supports individualized correction programs which consider confinement as the least desirable alternative consistent with public safety and the offenders needs. They support more community correction alternatives and resources, rather than an increase in the capacity or population of MSP, and support programs, facilities and programs to treat and rehabilitate those incarcerated looking toward their reintegration into society. She portrayed what a serious problem drunk driving is and stated that corrections and treatment working together can decrease recidivism.

Sharon Hoff-Brodowy, Montana Catholic Conference, also supported treatment instead of imprisonment and spoke about alcoholism as a disease. She encouraged passage of the bill, possibly combining it with SB 489, or using it as a pilot.

Mark Taylor, Anheuser-Busch, testified as a strong advocate of the ignition interlock device. Recidivism rate in states using the ignition interlock device is 25 percent. He stated they would like to see the bill go through the process.

EXHIBIT (fcs54a07)

Scott Chrichton, ACLU, testified in support of SB 483.

SEN. TOM BECK, stated that he co-sponsored the bill. He thought it was an area that had to be addressed. He has been in the legislature since the state has been incarcerating these offenders, and that it was time to look for another solution. He stated support for the treatment program. He thought both bills should be considered and possibly blended.

Opponents' Testimony:

Marty Lambert, Gallatin County Attorney, and Secretary of the County Attorneys Association, testified against SB 483. He questioned the idea trying to rehabilitate an individual who has been ordered to treatment previously and convicted on 3 prior occasions. He agreed with treatment goals in the bill. Gallatin County has a treatment court program. He objected to the bill mandating that an individual be turned loose regardless of previous criminal history. He said it was a public safety issue. He stated that community treatment was not available in smaller communities and that the bill had not been thought out enough regarding costs. He recommended an interim committee to consider changing the laws to get a treatment court going. He did not support SB 489. He said there would be enormous fiscal impact in the Department of Corrections to carry out what was being suggested. The courts would be monitoring unless a good and effective program was in place. He said he would be happy to participate in the process of implementing treatment courts but said SB 483 was not the way to do it.

Ed Zink, Deputy Yellowstone County Attorney, testified in opposition to SB 483. He said he was on the front lines every day in Billings prosecuting repeat felony offenders and negligent homicides. They average 100 DUIs a year. He agreed a solution was needed. He characterized repeat DUI offenders as violent offenders. They drive without licenses or insurance. He disagreed that there would be no cost to taxpayers. He said most offenders he dealt with were indigent. He suggested that the

minimum sentence and suspended sentence terms were too low. He thought the bill needed to be reworked. He stated that use of the ignition lock device was already in law and he did not think multiple offenders should be allowed to drive. Probation and parole in Billings is already overburdened. He questioned where the money would come from to supervise repeat felony offenders every day for 90 straight days. He suggested that 618-751-8 be scrapped and that revocations be dealt with by the offender facing the full and maximum sentence if treatment options fail. He also disagreed with notions of punishment. He said he just wanted the repeat offenders off the streets as long as possible. He urged careful consideration of the implications of SB 483.

Questions from Committee Members and Responses:

SEN. BILL TASH asked about brain stem swelling. **SEN. CHRISTIAENS** repeated that chemical dependency is a disease. The continued use of alcohol has a direct effect on the brain. The accumulations of the chemicals in the body affect the brain stem. Until brain stem swelling comes down, individuals are unable to fully and actively participate in treatment. Prolonged use of alcohol kills. There are health issues for multiple offenders that are in the prison system; they are high cost inmates.

SEN. JON TESTER asked what manpower would be necessary for aftercare. **SEN. CHRISTIAENS** said he did not put a treatment modality in the bill. Attendance at meetings would be verified by the person running the meeting. He claimed an individual could be supervised in the community for \$19.95 a day. He thought that should be beefed up. Aftercare is not the responsibility of the supervising officer. He brought up the bill because repeat offenders are being sent to prison in droves, and one in five gets treatment. He read from a document from Turning Point in Missoula dealing with treatment of folks returning from prison. It included a suggestion that relapse prevention program ought to be part of any complete treatment program. He said first time DUI offenses have averaged about 3100 a year. Second time DUIs are in excess of 2200 a year. Third DUIs average 494 and fourth time DUI is 274. Those are the numbers from DOJ. He restated the problem of a repeat offender going to prison and not receiving any treatment. He suggested melding the two bills and urged everyone to come to the table and make that happen.

Closing by Sponsor:

SEN. CHRISTIAENS closed on SB 483. He outlined what a good treatment program should be. He said that 86 percent of inmates are chemically dependent. Providing treatment will reduce

recidivism to about 9 percent. Under a suspended sentence, they can be revoked. The bill keeps the same time of probation that is in current law.

ADJOURNMENT

Adjournment: 11:53 A.M.

SEN. BOB KEENAN, Chairman

PRUDENCE GILDROY, Secretary

BK/PG

EXHIBIT (fcs54aad)